

Internal Revenue Service, Treasury

§ 31.3306(b)(10)-1

the \$225 is excluded from wages under this exception.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6708, 29 FR 3199, Mar. 10, 1964]

§ 31.3306(b)(9)-1 Moving expenses.

(a) The term “wages” does not include remuneration paid on or after November 1, 1964, to or on behalf of an employee, either as an advance or a reimbursement, specifically for moving expenses incurred or expected to be incurred, if (and to the extent that) at the time of payment it is reasonable to believe that a corresponding deduction is or will be allowable to the employee under section 217. The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that a deduction is allowable under section 217. The reasonable belief shall be based upon the application of section 217 and the regulations thereunder in Part 1 of this chapter (Income Tax Regulations). When used in this section, the term “moving expenses” has the same meaning as when used in section 217 and the regulations thereunder.

(b) Except as otherwise provided in paragraph (a) of this section, or in a numbered paragraph of section 3306(b), amounts paid to or on behalf of an employee for moving expenses are wages for purposes of section 3306(b).

[T.D. 7375, 40 FR 42351, Sept. 12, 1975]

§ 31.3306(b)(10)-1 Payments under certain employers’ plans after retirement, disability, or death.

(a) *In general.* The term “wages” does not include the amount of any payment or series of payments made after January 2, 1968, by an employer to, or on behalf of, an employee or any of his dependents under a plan established by the employer which makes provisions for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), which is paid or commences to be paid upon or within a reasonable time after

the termination of an employee’s employment relationship because of the employee’s—

- (1) Death,
- (2) Retirement for disability, or
- (3) Retirement after attaining an age specified in the plan established by the employer or in a pension plan of the employer as the age at which a person in the employee’s circumstances is eligible for retirement.

A payment or series of payments made under the circumstances described in the preceding sentence is excluded from “wages” even if made pursuant to an incentive compensation plan which also provides for the making of other types of payments. However, any payment or series of payments which would have been paid if the employee’s relationship had not been terminated is not excluded from “wages” under this section and section 3306(b)(10). For example, lump-sum payments for unused vacation time or a final paycheck received after retirement are payments which the employee would have received whether or not he retired and therefore are not excluded from “wages.” Further, if any payment is made upon or after termination of employment for any reason other than those set out in paragraphs (a)(1), (2), and (3) of this section such payment is not excludable from “wages” by this section. For example, if a pension plan provides for retirement upon disability, completion of 30 years of service, or attainment of age 65, and if an employee who is not disabled retires at age 61 after 30 years of service, none of the retirement payments made to the employee under the pension plan (including any made after he is 65) is excludable from “wages” under this section. However, if the pension plan had conditioned retirement after 30 years of service upon attainment of age 60, all of the retirement payments would have been excludable.

(b) *Plan.* The plan or system established by an employer need not provide for payments because of termination of employment for all the reasons set out in paragraphs (a)(1), (2), and (3) of this section, but such plan or system may provide for payments because of termination for any one or more of such reasons. Payments because of termination